ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CA06-593

MAY 2, 2007

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| RALPH BOZEMAN<br>APPELLANT<br>CROSS-APPELLEE | APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT<br>[NO. DR-2004-102-II] |
| V. | HON. VICKI SHAW COOK, CIRCUIT JUDGE |
| JOANNE BOZEMAN<br>APPELLEE<br>CROSS-APPELLANT | DISMISSED |

Ralph Bozeman has appealed from an order entered by the Garland County Circuit Court in his divorce from appellee Joanne Bozeman, and Joanne has cross-appealed. The contested issues at trial were alimony and the disposition of the parties' 90% interest in Storage World, L.P., a limited partnership that owns and operates a mini-storage facility in Little Rock. The order from which this appeal and cross-appeal are brought, however, is not a final order, and we must dismiss both the appeal and the cross-appeal.

On November 9, 2005, the circuit court entered the divorce decree, in which it denied appellee's request for alimony and made the following findings regarding Storage World:

> 9. Storage World. . . . [Appellant]'s two adult sons from a previous marriage each own 5% of the limited partnership. Neither son testified at trial, nor are [appellant]'s sons parties to this litigation, nor was there any evidence as to whether [appellant]'s sons would agree to a sale of Storage World. However, Ark. Code Ann § 9-12-315(a)(4) does not authorize the sale of Storage World stock.

> The Court finds that the fair market value of Storage World is $2,306,381.00 and that the parties' 90% ownership interest in Storage World has a fair market value of $2,075,743.00. According to [appellant]'s expert witness, the debt on Storage World as of April 1, 2005, was $1,407,979.20, 90% of which is marital ($1,267,181.20). [Appellant] shall produce documentation verifying the debt calculations he presented at trial. Subject to the production of documentation verifying the debt calculation, the Court finds that the parties' 90% ownership interest has a net fair market value of $808,561.80.
>
> The Court finds that the proof and the parties' assets do not support [appellant]'s contention that [appellant] does not have sufficient assets from which to pay [appellee] her 45% marital interest in Storage World, which equals $404,280.90. Further, [appellant]'s contention that he would be forced to sell his interest in Storage World and would therefore incur a pre-payment penalty to GMAC, a real estate commission at 6%, and tax liability are not well-founded. The Court finds that [appellant] does have sufficient assets to pay [appellee] $404,280.90, and [appellee] is awarded a judgment against [appellant] in that sum. *The parties are ordered to negotiate the details of how [appellee] will be paid by [appellant] for her interest in Storage World. Absent an agreement between the parties within ten days following entry of this Decree, the Court shall make further orders concerning the sum owed by [appellant] to [appellee] for this asset and reconsider the spousal support award described herein below.*

(Emphasis added.)

Appellant filed a notice of appeal from the November 9, 2005, decree on November 30, 2005, and appellee filed a notice of cross-appeal on December 6, 2005. On January 11, 2006, the circuit court entered an amended decree that dealt solely with the parties' stipulations concerning the disposition of their marital residence and related personalty.

On April 11, 2006, the circuit court entered another order addressing the parties' responsibilities for expert-witness fees, awarding appellee attorney's fees and costs, directing appellant to pay appellee for her one-half interest in the parties' cemetery plots, and addressing the disposition of certain items of personal property. In this order, the court noted the $404,280.90 judgment awarded to appellee in Paragraph 9 of the divorce decree for her

interest in Storage World. After calculating certain credits to be applied on the judgment, the court determined that the principal balance owed on the judgment against appellant was $244,514.13.

The record now before us includes each party's notice of appeal from the November 9, 2005 decree of divorce, but nothing in the record indicates that either party appealed from the order of April 11, 2006. The November 9, 2005 order was not final for purposes of appeal because it ordered the parties to negotiate the details as to how appellee would be paid for her interest in Storage World, and provided that, in the absence of an agreement between the parties, the court would make further orders concerning the amount owed by appellant to appellee for her interest in Storage World and would reconsider the spousal support issue.

To be appealable, an order must be final. *Liberty Life Ins. Co. v. McQueen*, 364 Ark. 367, ___ S.W.3d ___ (2005). This requirement is jurisdictional. *Id.* An order is final and appealable if it dismisses the parties from the court, discharges them from the action, or concludes their rights to the subject matter in controversy. *Id.* To be final, the order must be of such a nature as to not only decide the rights of the parties, but also put the court's directive into execution, ending the litigation or a separable part of it. *Penland v. Johnston*, 97 Ark. App. 11, ___ S.W.3d ___ (2006). A notice of appeal from a non-final order is a nullity, and any appeal brought from a non-final order is subject to dismissal. *Servewell Plumbing, L.L.C. v. Summit Contractors, Inc.*, 360 Ark. 521, 202 S.W.3d 525 (2005).

Here, the November 9, 2005 order did not put the court's directive into execution but expressly contemplated further actions by the parties and the court before the litigation would

be over. Because the only order from which each party has filed a notice of appeal was a non-final order, and because the parties have not appealed from a final order entered by the trial court, we lack jurisdiction to hear this appeal or the cross-appeal.

Dismissed.

GLADWIN and VAUGHT, JJ., agree.